



plaintiffs conceded regarding the issue of a prescriptive easement. **See** Filing No. 62. The bench trial in this case is scheduled for August 2005. **See** Filing No. 68. Based on these circumstances, the court finds the defendant has failed to show good cause for filing a summary judgment motion out of time. **See** Fed. R. Civ. P. 16(b). Furthermore, Judge Pratt has already determined several material issues of fact remain for trial. If, at trial, the court determines additional issues may be decided as a matter of law, those issues may be determined at that time without a delay caused by the defendant's third motion for summary judgment. Finally, the parties may further narrow the issues for trial by agreement, if appropriate. Upon consideration,

**IT IS ORDERED:**

1. The defendant's Motion for Leave to File Defendant's Renewed Motion for Summary Judgment (Filing No. 72) is denied.
2. The Clerk of Court shall strike the defendant's Renewed Motion for Summary Judgment (Filing No. 73).

DATED this 13th day of June, 2005.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge